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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/151,300 09/11/98 KIRCHGEORG

J A7205

EXAMINER

QM22/0620

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WASHINGTON DC 20037-3202

SCHAEITZLE  
ART UNIT PAPER NUMBER

3737  
DATE MAILED:

06/20/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.  
**09/151,300**

Applicant(s)  
**Kirchgeorg et al.**

Examiner  
**Ken Schaetzle**

Group Art Unit  
**3737**



☒ Responsive to communication(s) filed on Apr 5, 2000

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-26 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1-26 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 3737

## DETAILED ACTION

### *Claim Objections*

1. Claim 2 is objected to because of the following informalities: the last line contains an obvious typographical error. Appropriate correction is required.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

3. Claims 1, 2, 4 and 5 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Safar et al. (Pat. No. 5,879,316).
4. Claims 1-12 and 17-25 are rejected under 35 U.S.C. 102(e) as being anticipated by Hood et al. (Pat. No. 5,975,081).

Specifically regarding claim 3, one can consider cover 26 to cover the overall device and thus the lower compartments in unit 22.

5. Claims 1-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Linden (Pat. No. 5,626,151).

Concerning claim 3, one can consider element 10 to constitute a cover for covering base

2. One could also consider the canopy 4 to constitute such means.

Art Unit: 3737

Regarding claims 14-16, as recited above, one may consider the canopy 4 with window 7 to constitute a clear cover. The recitation that the cover is clear so that the medical equipment can be viewed, is considered a statement of intended result.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hood.

While Hood does not disclose the means for modal control of the oxygen delivery system, Hood does teach that a central controller may be employed in any known manner to monitor, control, prioritize and regulate power to the various devices of the system (col. 21, lines 9-29). To therefore employ a modal control means of the type set forth in claim 26 would have been considered obvious by those of ordinary skill in the art.

***Response to Arguments***

8. Applicant's arguments with respect to claims 1-9, 14, 15 and 17-21 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ken Schaetzle whose telephone number is (703) 308-2211. The examiner can normally be reached on Mondays through Fridays from 9:30 to 6:00.

Serial Number: 09/151,300

Page 4

Art Unit: 3737

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marvin Lateef, can be reached on (703) 308-3256. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3590.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

  
KENNEDY SCHAETZLE  
PRIMARY EXAMINER

June 17, 2000